



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Bauer Corporation

File: B-231628

Date: July 28, 1988

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### DIGEST

Protest that awardee will not perform the amount of work in labor surplus area as promised in its bid is a challenge of the contracting agency's affirmative determination of responsibility and is therefore not for General Accounting Office review except in limited circumstances not present here.

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### DECISION

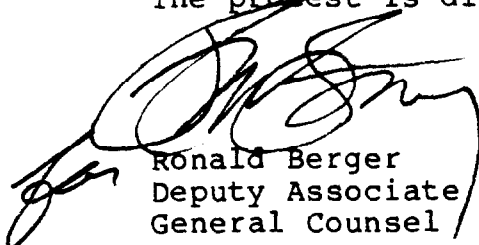
Bauer Corporation protests an award to FiberHart, Inc., by the Defense General Supply Center (DGSC) under solicitation No. DLA700-87-R-2356 for the supply of fiberglass step-ladders. FiberHart was awarded the labor surplus area (LSA) set-aside portion of the contract. Bauer protests that FiberHart does not manufacture ladders but merely assembles ladder components, and was therefore ineligible for an LSA preference because the costs FiberHart will incur in an LSA will not exceed 50 percent of its total manufacturing or production costs as required by the solicitation. Bauer bases its protest on a number of assumptions about components FiberHart would buy, subcontractors it would use, and expenses it would incur under the contract.

FiberHart's bid specifically states that more than 50 percent of the work will be performed in an LSA. The agency determined that FiberHart was responsible, and awarded the contract on this basis. When Bauer challenged the award in a protest filed with DGSC, the agency required FiberHart to provide a more definitive breakdown of the costs it would incur in an LSA. FiberHart did so, to the agency's satisfaction, and Bauer's agency-level protest was denied. This protest followed.

The question of whether FiberHart will perform the required amount of work in an LSA as promised in its bid relates to the contracting agency's affirmative determination of

FiberHart's responsibility. Putnam Mills Corp., B-218776, June 24, 1985, 85-1 CPD ¶ 718. This Office does not review protests against affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of procuring officials or that the solicitation contains definitive responsibility criteria that the procuring agency failed to apply. Id; Dragon Services, Inc., B-213041, Mar. 19, 1984, 84-1 CPD ¶ 322. Neither circumstance has been alleged in this case.

The protest is dismissed.



Ronald Berger  
Deputy Associate  
General Counsel